



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

March 17, 1995

Honorable Bill Ratliff  
Chair  
Committee on Education  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 95-007

Re: Disposition of debts and assets in the  
dissolution of the Morris County Hospital  
District (ID# 28637)

Dear Senator Ratliff:

You ask about the winding up of the affairs of the Morris County Hospital District following an election at which the voters voted to dissolve the district.

The district was created, with boundaries coextensive with Morris County, pursuant to article IX, section 9, of the state constitution and enabling legislation adopted in 1989. Acts 1989, 71st Leg., ch. 719, at 3258. The 1989 enabling act was amended twice in 1991. Both amendatory acts related to the procedures for dissolution of the district. Acts 1991, 72d Leg., ch. 469, at 1696; Acts 1991, 72d Leg., 1st C.S., ch. 12, at 39. The enabling act as amended (hereinafter, the "act"), in section 9.08, provides that after an election at which the majority of votes favor the dissolution of the district, the district's board of directors shall "enter an order dissolving the district," transfer leased property back to the lessors, and "dispose of the district's assets and liabilities as provided by Section 9.09."

Section 9.09(a) provides in pertinent part:

(a) After the board issues the dissolution order, the board shall:

(1) determine the debt lawfully incurred and owed by the district; and

(2) impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value.

....

(d) When all lawfully incurred and outstanding debts and obligations of the district are paid, the board shall return the pro rata share of all unused tax money to each person who paid the tax imposed under this section. A person may request that the person's

share of surplus tax money be credited to the person's county taxes. If a person requests the credit, the board shall transmit the funds to the county tax assessor-collector.

(e) If after payment of all lawfully incurred and outstanding debts and obligations of the district and after return of any unused tax money under Subsection (d) of this section, the district has any remaining assets, those assets shall be transferred to Morris County or another governmental entity in the district to be used for the benefit of persons in the district.

(f) After the district has paid all its debts and disposed of all assets and funds as prescribed by this section, the board shall file a written report with the [Morris County Commissioners Court] setting forth a summary of the board's actions after the dissolution of the district. Not later than the 10th day after it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county<sup>(1)</sup> shall enter an order affirming dissolution of the district. [Footnote added.]

You advise:

A dissolution election carried. The board determined the lawfully incurred debt of the district and imposed a tax to pay it. The board now has about \$42,000 in unused tax funds, which resulted from the board's having settled debts for fifty cents on the dollar.

Following the dissolution election, the board requested the Morris Country Commissioners Court to take over indigent health care. The commissioners court assumed this duty and has spent more than \$29,000 through May 1994.

The board now wishes to make its final report to the commissioners court and disburse the remaining funds. However, board members feel the return of the money pro rata may be cost prohibitive.

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<sup>1</sup>The word "each" appears to have been carried over from the general law provisions on hospital district dissolution in Health and Safety Code section 286.106, which section 9.09 (g) reproduces more or less verbatim. The only commissioners court involved in dissolution of the Morris County Hospital District is that of Morris County.

You ask specifically:

1. May the commissioners court's takeover of indigent health care be considered a lawfully incurred and outstanding debt and obligation of the district that the board must pay? May the board transfer the money to the county directly to reimburse it for indigent health care?
2. How should the tax money be distributed if the cost of distributing it would exceed the amount of money to be distributed?

With regard to your first question, we note that where neither a hospital district nor a public hospital<sup>2</sup> exists, a county has a duty to provide health care for its indigent residents. Where a hospital district exists the county is relieved of that duty, which is assumed by the hospital district. See Health & Safety Code ch. 61, subchs. B, C; Tex. Const. art. IX, § 9; *see also* 36 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW §§ 26.4, .28 (Texas Practice 1989). At what point, therefore, in the process of dissolving the hospital district does the hospital district cease to exist such that the duty of the district to provide health care to indigents reverts back upon the county? Expenses incurred by the county for providing such services after that point, when it becomes the county's constitutional and statutory duty to provide the services, cannot, we think, properly be considered as debts of the district owing to the county.

The dissolution scheme provided for in the act suggests two different junctures at which the existence of the district could arguably be considered to end, such that the responsibility of providing indigent health care shifts back to the county at that time: the point at which the board "enter[s] an order dissolving the district" after the favorable election on the dissolution measure (section 9.08(1)), or the point at which the commissioners court finally "enter[s] an order affirming the dissolution of the district," after having received the board's report of its winding up of the district's affairs and determined that the requirements of section 9.09 *vis-à-vis* the disposition of the district's debts and assets have been "fulfilled" (section 9.09(f)).

We think the first point--when, after the successful dissolution election, the board "enter[s] an order dissolving the district"--is the point at which the duty to provide health care reverts to the county. The next steps in the statutory scheme--the board's "determin[ing] the debt lawfully incurred and owed by the district," and imposing a special tax to pay the debt--suggest that the debt will be more or less fixed at that point, not

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<sup>2</sup>We assume there is no "public hospital" distinct from the facilities of the district involved in the fact setting you ask about. See Health & Safety Code § 61.002(11) (definition).

subject to further unforeseeable increases as would be occasioned by the district's remaining responsible for future provision of services. Indeed, the other point in time at which the responsibility for the provision of services might shift to the county, the point when the commissioners court "affirm[s] the dissolution," may be delayed for some time. (Notably, the first bill amending section 9.09 in 1989, allowed two years for the collection of the special tax levied under that section to pay the district's debt; the second 1991 amendment removed this two year limitation. Acts 1991, 72d Leg., ch. 469; Acts 1991, 72d Leg., 1st C.S., ch. 12.) It is significant too, we think, that during this period the district would likely be disposing of the very facilities which enabled it to provide the services in question.

Thus, in our opinion, the district is not responsible for providing the services in question throughout the perhaps lengthy process of dissolution. Once the board orders the dissolution of the district after the election, to the extent that it continues in existence, the district's principal business becomes the disposition of its liabilities and assets. The commissioners court's ultimate "affirming" of the dissolution is, as section 9.09(f) indicates, an approval limited to the way in which the board has disposed of district debts and assets. We do not believe that it is a necessary condition to the district's ceasing its provision of health care services. As a legal matter, we think that the duty to provide the care in question shifts back to the county when the board enters the dissolution order after the election. The costs the county subsequently incurs in providing the care, being ones incurred in the performance of its own duty, should then not be considered by the district as the district's responsibility such as to constitute a "debt" of the district to the county.<sup>3</sup>

In response to your second question--"How should the [unused] tax money be distributed if the cost of distributing it would exceed the amount of money to be distributed?"--we would note that we cannot of course determine what the costs of any particular method of distribution would be or such method would be "cost prohibitive."<sup>4</sup> In any case, it is our opinion that the costs of distributing the tax money could be reasonably characterized as a "debt," if in fact the district did incur the costs and had to pay them. Certainly, in that case, if the costs of any possible equitable distribution in fact *exceeded* the amount of unused tax funds left, and there were no other district assets left to pay those costs, then we think the board might reasonably determine not to distribute.

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<sup>3</sup>We caution, however, that a court exercising its equitable, remedial powers might well take other factors into account in determining at what point in the dissolution process the responsibility of providing indigent health care should be deemed to shift back to the county, particularly if that issue were presented as only part of the overall problem of winding up the district's affairs.

<sup>4</sup>We note that subsection (d) of section 9.09 may provide a less expensive means of distributing the funds--by crediting them, upon request, to the taxpayers' county taxes.

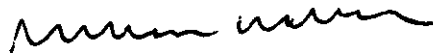
On the other hand, we do not believe that the fact that the cost of distribution would exceed the amount to be distributed would in itself, as a matter of law, preclude such distribution, particularly where there were "remaining assets" the district could liquidate to pay the distribution costs.<sup>5</sup>

### S U M M A R Y

The point at which the duty to provide indigent health care shifts back to the county upon dissolution of the Morris County Hospital District is when the district's board of directors, after the election to dissolve the district, orders the dissolution. Costs incurred by the county thereafter in providing care should not be considered the responsibility of the district.

That the costs of the district's redistributing unused tax funds to taxpayers exceeds the amount of such funds does not in itself preclude such distribution, especially if the district retains other assets from which the costs could be paid.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee

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<sup>5</sup>We note that the provisions of section 9.09 relative to the disposition the district's debts and assets may raise broader questions, which, as you do not specifically allude to them, we do not attempt to fully address here. There is no express provision in section 9.09 or elsewhere in the act for liquidation of assets to pay the debt. Subsection (e) provides only for the "transfer," after the debts are paid and the unused tax money distributed, of "remaining" assets to the county or another governmental entity in the district for the benefit of the persons in the district. The "transfer" language tracks the constitutional language in article IX, section 9. The latter, by the proviso that disposal or transfer of the assets must be for "due compensation *unless* such assets are transferred to another governmental agency" indicates that the transfers to other governmental entities contemplated there, and perhaps those under section 9.09(e), do not have to be for "due compensation."

In any case, what is of some concern in section 9.09 in the context of your question, is the flexibility the district is apparently given in determining what it considers the amount of its "debt." If it has "assets" which could be liquidated to pay the debt, it is not clear that the district is required to pay the debt in that way rather than retaining the assets for future "transfer" to another governmental entity and imposing or increasing the special tax it may levy under section 9.09 as the means of paying such "debt." It might be, of course, that the provisions in question were tailored for a particular fact situation their application to which will not raise these issues.